

TREASURY - GENERAL

STATE INVESTMENT COUNCIL

**Common and Preferred Stocks and Issues Convertible into
Common Stock of International Corporations**

Proposed Amendments: N.J.A.C. 17:16-44.1

Authorized By: State Investment Council, Peter A. Langerman, Director,
Division of Investment

Authority: N.J.S.A. 52:18A-91

Calendar Reference: See Summary below for explanation of exception to calendar
requirement.

Proposal Number: PRN 2004-125

Submit comments by June 4, 2004 to:

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The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 17:16-44.1 would eliminate the Approved Common and Preferred Stock and Convertible Securities List of International Corporations and the Approved List of International Equity Exchange-traded Funds and permit the Division to invest in equities that are issued by a company or bank incorporated or organized under the laws of the countries approved by the Council, which are listed in N.J.A.C. 17:16-20, or that comprise more than five percent of the market cap of the equities included in the MSCI EAFE Index, both of which are currently provided for in the rule; and permit the Division to invest in securities that trade on an exchange or over-the-counter market. An additional standard is being added which would require

such securities to have a minimum market capitalization of \$250 million; however, the Division would be able to retain securities whose capitalization might fall below the criteria subsequent to purchase. The amendment would allow the Division to retain any distribution received as a result of a corporate action, even if the security does not meet the requirements of this subchapter.

Given the thousands of individual investments comprising the Approved Lists, it has become unrealistic to expect that Council members will have extensive knowledge of all of these investments. Eliminating the Approved Lists at N.J.A.C. 17:16-44.1 (b), while at the same time providing criteria for selection of individual investments, gives recognition to the fact that the Council relies on the Division of Investment to have this in-depth knowledge and to select particular investments. Since the Division of Investment will be reporting to the Council on investment activities, the Council shall continue to be able to fulfill its role of monitoring of investments contained in the various portfolios.

Pursuant to the proposed amendments at N.J.A.C. 17:16-44.1 (c), the Division of Investment is authorized to purchase only investments that meet the requirements set forth in the subchapter. However, there may arise, from time to time, certain unique circumstances where the Division wishes to purchase an investment that does not meet the requirements set forth in the subchapter. In such event, the proposed amendments at N.J.A.C. 17:16-44.1 (c) provide that the Division could present justification to the Council, and the Council would have the authority to approve the purchase on a case-by-case basis.

Because the Division is providing a 60-day comment period on this notice of proposal, this notice is exempt from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

There shall be no social impact from the proposed amendments, although the long term economic effects could benefit the State's taxpayers.

Economic Impact

The proposed amendments may provide an opportunity to earn greater returns as well as to broaden the diversification of the portfolios managed by the Division.

Federal Standards Statement

A Federal standards analysis is not required because the investment policy rules of the Division of Investment are under the auspices of the State Investment Council, and are not subject to any Federal requirements or standards.

Jobs Impact

The State Investment Council and the Division of Investment do not anticipate that any jobs will be generated or lost by virtue of the amendments to this rule.

Agriculture Industry Impact

The proposed amendments shall have no impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required, since the proposed amendments impose no requirements on small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but regulates only the Director of the Division of Investment.

Smart Growth Impact

The proposed amendments are not anticipated to have an impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 44. COMMON AND PREFERRED STOCKS AND ISSUES
CONVERTIBLE INTO COMMON STOCK OF
INTERNATIONAL CORPORATIONS AND
**INTERNATIONAL EQUITY EXCHANGE-TRADED
FUNDS**

17:16-44.1 Permissible investments

(a) [Permissible] **Subject to the limitations contained in this subchapter, permissible** investments include stock issued by a company or bank incorporated or organized under the laws of the countries:

1. Listed on the Approved List of International Government and Agency Obligations set forth in N.J.A.C. 17:16-20; [or]

2. That comprise more than five percent of the market capitalization of the stocks included on the Morgan Stanley Capital International EAFE (MSCI EAFE) Index [.] ;

3. That have a minimum market capitalization of \$US 250 million. Subsequent to purchase, if capitalization falls below \$US 250 million, the investment does not have to be sold[.] ; or

4. That trade on an exchange or over-the-counter market.

[(b)] The Director shall submit a list of common stocks to the Council for its approval. Such list may be amended or enlarged from time to time subject to the Council's approval and shall be designated the "Approved Common and Preferred Stock and Convertible Securities List of International Corporations."]

[(c)] (b) [The Director shall submit a list of international] **International** equity exchange-traded funds [to the Council for its approval. Such list may be amended or enlarged from time to time subject to the Council's approval and shall be designated the "Approved List of International Equity Exchange-traded Funds." Such funds] **or closed-end global, regional or country funds** must have a minimum market capitalization of \$US 100 million. For the purposes of this subchapter, exchange-traded funds **or closed-end global, regional or country funds** shall be considered as common stock in determining all applicable limitations contained within this subchapter.

(c) **Notwithstanding the restrictions contained in this subchapter, the Council may approve the purchase of common stocks and issues convertible into common stock of international corporations or international equity exchange-traded funds or closed-end global, regional or country funds on a case-by-case basis.**

[(d) The Director shall only select issues of common stocks from the "Approved Common and Preferred Stock and Convertible and Securities List of International Corporations" or international equity exchange-traded funds from the "Approved List of International Equity Exchange-traded Funds" to be purchased by the pension funds.]

[(e)] (d) Notwithstanding the above restrictions, the Director may:

1. (No change.)
2. Purchase the preferred stock, whether convertible or not, of a company, the stock of which qualifies for investment [and is on the "Approved Common and Preferred Stock and Convertible Securities List of International Corporations"] **under this subchapter;**
3. Purchase the convertible issue of a company, the common stock of which qualifies for investment [and is on the "Approved Common and Preferred Stock and Convertible Securities List of International Corporations"] **under this subchapter;** [and]
4. Purchase up to one percent of any eligible fund's assets in new public offerings of companies without prior approval of the State Investment Council provided, however, approval will be sought at the next regularly scheduled Council meeting **in the event the security does not subsequently meet the requirements of this subchapter.** [In the event] **If** approval is not granted, the securities will be sold within three months of the Council's disapproval[.] ; **and**
5. **Retain any distribution received as a result of a corporate action, even if the security does not meet the requirements of this subchapter.**